

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JUNAID MUHAMMADUNN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DERRICK DUNN,

Respondent-Appellant,

and

QAMARA MUHAMMAD,

Respondent.

In the Matter of ZIAD NOON, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

QAMARA MUHAMMAD,

Respondent-Appellant.

In the Matter of JUNAID MUHAMMADUNN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

UNPUBLISHED
January 17, 2008

No. 279330
Washtenaw Circuit Court
Family Division
LC No. 2004-000168-NA

No. 279331
Washtenaw Circuit Court
Family Division
LC No. 2004-000167-NA

Petitioner-Appellee,

v

QAMARA MUHAMMAD,

Respondent-Appellant,

and

DERRICK DUNN,

Respondent.

No. 279332

Washtenaw Circuit Court

Family Division

LC No. 2004-000168-NA

Before: Kelly, P.J., and Cavanagh and O'Connell, J.J.

PER CURIAM.

Following a hearing, the trial court terminated respondent Qamara Muhammad's parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (c)(ii) (other conditions have not been rectified), and (j) (children would be harmed if returned to the mother's home), and terminated respondent Derrick Dunn's parental rights to the older child pursuant to § 19b(3)(c)(i). Respondent Dunn appeals as of right in Docket No. 279330, and respondent Muhammad appeals as of right in Docket Nos. 279331 and 279332. These appeals have been consolidated for this Court's consideration. We affirm.

I. Basic Facts

Respondent Muhammad admitted the allegations contained in the amended petition, including: she had sought to have the younger child removed from her care because she no longer wanted him and was afraid she would hurt him; she had grabbed the older child around his neck and punched him, but "blacked out" and did not recall doing this; she had been diagnosed with bipolar disorder; and her mental health grossly impaired her decision-making ability regarding her children. The children were placed with their maternal grandmother. Respondent Muhammad received psychiatric treatment and medication, attended individual therapy, and participated in anger management classes. Because respondent Muhammad had sufficiently complied with the provisions of the case service plan, the children were returned to her care.

Within a week of their return to respondent Muhammad's care, petitioner removed the children because respondent Muhammad was arrested when the children were found wandering alone in a park at 2:30 a.m., crying and very scared. At that time, the older child was approximately six years old, and the younger child was a little less than four years old. Respondent Muhammad had left the children alone in her vehicle for over two hours. Her driver's license had been suspended, she had outstanding warrants for traffic violations, and she was no longer using her medication. Petitioner subsequently learned that the conditions of

respondent Muhammad's home were deplorable. Mice were found in her pantry, cat feces were on the floor, the children's beds lacked sheets, and broken glass was found in the children's bedroom. Petitioner also learned that respondent Muhammad had an altercation with the children's grandmother in front of the children. Respondent Muhammad spent approximately two months in jail, pleaded guilty to criminal charges stemming from the incident in the park, and was placed on probation. Although a definitive psychiatric diagnosis was never obtained, mental health evaluations of respondent Muhammad suggested an unspecified mood or personality disorder with poor impulse control, and she experienced what she described as dissociative episodes. Respondent Muhammad was unable to maintain long-term employment and housing.

Following a termination hearing, the trial court found by clear and convincing evidence that respondent Muhammad's compromised mental health, which led to the adjudication, continued to exist and there was no reasonable likelihood that it would be remedied within a reasonable period of time given the children's ages. The trial court also found by clear and convincing evidence that other conditions, namely the dangerous condition of respondent Muhammad's home and her failure to maintain employment, existed and had not been resolved. The trial court found by clear and convincing evidence that there was a reasonable likelihood that the children would be harmed if returned, and it noted that the children actually were harmed by the incident in the park. The trial court found that termination was not clearly contrary to the children's best interests and terminated respondent Muhammad's parental rights pursuant to § 19b(c)(i), (c)(ii), and (j).

The allegations against respondent Dunn, a Canadian citizen, included a failure to provide financial support for the older child, a failure to visit him, and an inability to be located. The evidence showed that respondent Dunn informally contributed financial support for the older child's care when he was able, but he was unavailable to care for the child when needed. Respondent Dunn was detained at the United States border returning from Canada and barred from entering the United States for two years after an investigation revealed that he had performed work in the United States without a visa. After respondent Dunn was caught attempting to enter the United States on foot, he was banned from entering the United States for five years, which will expire in March 2010. Respondent Dunn learned of a program that would enable him to enter the United States for court proceedings, but he did not pursue it. He similarly never sought to overturn the ban on his reentry or otherwise seek legal reentry into the United States. Instead, he participated in portions of the termination hearing by telephone. At the conclusion of the termination hearing, respondent Dunn had not seen the older child for more than two years and had not spoken to him in four months. The trial court found that there was clear and convincing evidence that respondent Dunn had been essentially unavailable to Junaid. The trial court found that termination was not clearly contrary to the older child's best interests and terminated respondent Dunn's parental rights pursuant to § 19b(c)(i).

II. Standard of Review

The existence of a statutory ground for termination must be proven by clear and convincing evidence. MCR 3.977(F)(1)(b) and (G)(3); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). We review the trial court's findings of fact for clear error. MCR 3.977(J); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). A finding of fact is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a

mistake has been made. *Id.* Due regard is given to the trial court's special opportunity to judge the credibility of witnesses. *In re Miller, supra* at 337. Once a statutory ground for termination is established, "the court shall order termination of parental rights . . . unless the court finds that termination . . . is clearly not in the child's best interests." MCL 712A.19b(5). The trial court's best interests determination is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 353-354, 356-357; 612 NW2d 407 (2000).

III. Respondent Derrick Dunn (Docket No. 279330)

The trial court did not clearly err in finding that § 19b(3)(c)(i) was established by clear and convincing evidence. The trial court found that it had a basis for exercising jurisdiction over the older child because respondent Dunn's whereabouts were unknown when the child was removed from respondent Muhammad and he was therefore unable to provide care for the child. In 2005, respondent Dunn, a Canadian citizen, remained unable to care for the child because he was prohibited from entering the United States for five years. Thus, there was clear and convincing evidence that this condition would not be rectified within a reasonable time considering the older child's age. The trial court did not clearly err in finding that there was a statutory basis for terminating respondent Dunn's parental rights.

With regard to the older child's best interests, although the evidence showed that respondent Dunn and the child had a good bond and a positive relationship, their contact had been intermittent and generally limited to telephone calls. When the termination proceeding concluded, respondent Dunn had not seen the older child for approximately 28 months, and he had not spoken to him for four months. Under the circumstances, the evidence did not clearly show that termination of respondent Dunn's parental rights was contrary to the child's best interests.

Respondent Dunn also argues that his right to procedural due process was violated by the trial court's failure to secure his physical presence at the termination hearing. Because respondent Dunn did not raise this due process issue in the trial court, the issue is not preserved and our review is limited to plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

We must apply the balancing test for due process set forth in *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976). *In re Vasquez*, 199 Mich App 44, 47-49; 501 NW2d 231 (1993). We consider three distinct factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. [*Eldridge, supra* at 335.]

Although respondent Dunn's interest in avoiding termination of his parental rights was a compelling one, see *Vasquez, supra* at 47, respondent was represented by an attorney and his attorney was aware in advance of the hearing that respondent was prohibited from entering the United States to attend the hearing. At counsel's request, special arrangements were made to

allow respondent Dunn to participate in the proceeding and testify telephonically, and respondent had the opportunity to confer with counsel and assist in his defense. These procedures minimized the likelihood of an erroneous deprivation of respondent Dunn's parental rights. *Id.* at 48. According to the record, the process for allowing limited entry into the country for specific court appearances takes several months for approval and respondent Dunn failed to pursue it. The administrative burden in attempting to secure respondent Dunn's entry into the United States to allow him to attend the hearing would have been great. See *id.* (no due process violation where the respondent-parent in a termination proceeding was incarcerated in Texas because the financial and administrative burden on the state was great and the respondent was represented by counsel at the hearing). Under the circumstances, respondent Dunn has failed to show a due process violation.

IV. Respondent Qamara Muhammad (Docket Nos. 279331 & 279332)

The trial court did not clearly err in finding that § 19b(3)(c)(i), (c)(ii), and (j) were each established by clear and convincing evidence.

With regard to § 19b(3)(c)(i), the condition that led to the initial adjudication was respondent Muhammad's mental instability, which interfered with her ability to provide proper care. At the termination hearing, respondent Muhammad admitted that she still did not have a firm diagnosis or treatment for her condition, essentially conceding that the condition had not been rectified. The evidence clearly and convincingly showed that she was still prone to making impulsive decisions, especially when under stress, and was concerned about what she might do when suffering from a dissociative episode. She was not certain what conditions might trigger a dissociative episode, in addition to anger and stress. Additionally, she did not accept responsibility for her actions and continued to place blame for her impulsive actions and poor decisions on others. Respondent Muhammad's proposed solutions for her problems centered around being provided with more therapy and financial assistance, but she repeatedly indicated a strong unwillingness to work with the court and the agency, preferring instead to be guided by her own instincts. Her former psychiatrist stated that there was no "quick fix" for respondent Muhammad's condition. The trial court did not clearly err in finding that respondent Muhammad's mental health problems had not been rectified, and that this condition was not reasonably likely to be rectified within a reasonable time considering the children's ages.

With regard to § 19b(3)(c)(ii), there was clear and convincing evidence that respondent Muhammad still did not accept responsibility for her actions, and was unable to understand how her actions affected her children. For example, she saw nothing wrong with taking her young children along on midnight recreational errands. Further, at the time of termination, she still did not have a steady job, independent housing, or a driver's license. There was clear and convincing evidence that she did not benefit from the many services provided, and that she was no longer willing to cooperate in a treatment plan, beyond continued therapy. The trial court did not clearly err in finding that other conditions existed that caused the children to come within the court's jurisdiction and that, despite being provided with services and recommendations, the conditions continued to exist and there was no reasonable likelihood that they would be rectified within a reasonable time considering children's ages.

With regard to § 19b(3)(j), there was clear and convincing evidence that, in addition to the matters discussed above, respondent Muhammad saw nothing wrong with hiding broken

glass under a rug in the children's bedroom rather than cleaning it up, or with the other deplorable conditions of her apartment. The trial court did not clearly err in finding that, based on respondent Muhammad's conduct and capacity, there was a reasonable likelihood that the children would be harmed if returned to her care.

Having found a statutory ground for termination, the trial court properly considered the children's best interests. Despite evidence of a strong bond between respondent Muhammad and the children, the evidence also showed that the children suffered various ill effects from being left alone in a park at night and blamed themselves. Additionally, respondent Muhammad would not be able to provide the stability and permanence that the children needed. The trial court did not clearly err in concluding that termination of respondent Muhammad's parental rights was not contrary to the children's best interests.

Respondent Muhammad also argues that the trial court's decision violates her constitutional right to parent her children. Respondent Muhammad correctly observes that "[p]arents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process." *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). Here, however, because clear and convincing evidence was presented to establish a statutory ground for termination under § 19b(3), that liberty interest no longer includes the right to custody, control, companionship, and care of the children and instead "gives way to the state's interest in the child's protection." *In re Trejo*, *supra* at 355-356. In such situations, a decision to terminate parental rights is not a violation of due process. *Id.*

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Mark J. Cavanagh

/s/ Peter D. O'Connell